BEFORE

THE HON'BLE CHHATTISGARH HIGH COURT OF JUDICATURE

AT BILASPUR.

WRIT PETITION NO. 761/2001.

PETITIONER

Manoj Kumar aged about 32 years son of Tularam, Truck Cleaner Daily wages Nagar Palik Nigam Bilaspur, resident of Nariyal Kothi, Madhuban Road, Dayal Band Bilaspur Tahsil and district Bilaspur (Chhattisgarh)

VERSUS

RESPONDENT

1. State of Chhattisgarh Through: Chief Secretary General Administrative Department, Raipur.

2. State of Madhya Pradesh Through; Chief Secretary General Administrative Department Vallabh Bhavan Bhopal.

3. Nagar Palik Nigam Bilaspur Through: Commissioner, Nagar Palik Nigam Bilaspur.

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

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HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.761 OF 2001

Petitioner : Manoj Kumar

Versus

Respondents : State of Chhattisgarh and others

Present : Mr. Ram Kumar Tiwari, counsel for the petitioner.
Mrs. Anju Ahuja, Deputy Government Advocate for the State of Chhattisgarh/respondent No.1.
Mrs. Hamida Siddique, counsel for respondent No.3.
None appears for respondent No.2.

ORDER
(Passed on 8th Day of January, 2007)

The mother of the petitioner, namely, Smt. Sukhiyabai died while working as Cleaner in the Municipal Corporation, Bilaspur in harness on 25-11-1999.

2. Thereafter, the petitioner made applications for compassionate appointment to the Municipal Corporation, Bilaspur on 9-12-1999 (Annexure P-3) and again on 27-3-2000 (Annexure P-4).

3. Respondent No.3 – the Municipal Corporation, Bilaspur, by memo dated 26-7-2000 (Annexure P-8), informed the petitioner that

in the light of the circular of the State Government dated 1-5-2000, the petitioner is not entitled for compassionate appointment as his elder brother is already employed in Respondent No.3 – the Municipal Corporation, Bilaspur. Accordingly, the claim of the petitioner for compassionate appointment has been rejected vide said memo dated 26-7-2000 (Annexure P-8).

4. On perusal of the impugned order, it appears that the petitioner was refused compassionate appointment as per circular dated 1-5-2000, wherein it is clearly provided that if any member of the family of the deceased employee is already in the Government service or in the service of Corporation, Board, Council or Commission, no other person would be entitled to compassionate appointment. The clause reads as under :-

> "अनुकम्पा नियुक्ति के लिये अपात्रता –
>
> 1. यदि दिवंगत शासकीय सेवक के परिवार का कोई भी सदस्य पूर्व से शासकीय सेवा अथवा निगम, मण्डल, परिषद, आयोग आदि में नियोजित हो, तो उसके परिवार के किसी अन्य सदस्य को अनुकम्पा नियुक्ति नहीं दी जावेगी ।"

5. Admittedly, the elder brother of the petitioner, namely, Shri Ramkumar, is in the service of the Municipal Corporation, Bilaspur for the last 15 years.

6. It is well settled that the appointment on compassionate ground is not a method of recruitment, but, is a facility to provide for immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employee from destitution. In other words, the object of compassionate appointment is to enable penurious family to tide over the sudden financial crisis and is not to provide employment. It is also well settled that mere death of the employee does not entitle his family to claim compassionate appointment if the family members could sustain themselves financially from other sources of income.

7. The Supreme Court, in ***State of J & K and others*** **vs.** ***Sajad Ahmed Mir***[1], after having considered all the aspects of compassionate appointment, observed as under :-

> "11. ..... it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment

and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution."

8. As a result and for the reasons stated hereinabove, the petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1 (2006) 5 SCC 766

Gopal